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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 1 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

)

CC Docket No. 92-77

Billed Party Preference

)

for 0+ InterLATA Calls

)

To: The Commission

COMMENTS OF AMERITEL PAY PHONES, INC.

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SUMMARY

There are several compelling reasons why the Commission should exempt confinement facilities from the application of any mandatory Billed Party Preference ("BPP") system, regardless of what it intends to do with its BPP proposal generally. First, the situation at confinement facilities differs substantially from the telecommunications market at large and the Commission has previously acknowledged that the special fraud concerns relating to inmate telephone traffic warrant special regulatory treatment for inmate calling.

Second, BPP would remove the correctional facilities' current individualized, site-specific call control systems that provide tracking, auditing and control of inmate calls. Inmates would be free to select long distance carriers that do not have such capabilities. As a result, inmate telephone fraud is likely to dramatically increase under BPP. The network-based call control "solution" proposed by advocates of BPP is inherently flawed and cannot provide the necessary call and fraud control. Under a network based system it will be impossible to ensure the needed daily interaction between every interexchange carrier and every correctional facility in the nation. This "solution" is also unrealistic because every carrier in the country would be forced to participate. Very few carriers possess either the financial or technical ability to upgrade their systems to the level required by a network-based system.

Additionally, if BPP is implemented, correctional facilities will lose the revenue stream that currently funds both the call control service enhancements and important inmate programs. These services will either be lost or paid for by taxpayers. Because

call control would be dramatically reduced, jailers would be forced to place new, stringent restrictions on inmates' use of telephones.

Finally, setting arbitrary rate limits on operator service rates is unnecessary to prevent excessive rates. Many states have mandated rate ceilings for these services and competition between providers will keep rates at a reasonable level. Any limited overcharging which may still occur is minor and cannot be used to justify replacing the current system with BPP.

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To: The Commission

COMMENTS OF AMERITEL PAY PHONES, INC.

AmeriTel Pay Phones, Inc. ("AmeriTel" or the "Company") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking on Billed Party Preference ("BPP").¹ AmeriTel is an Inmate Calling Services Provider ("ICS Provider") -- i.e., an interexchange carrier ("IXC") which specializes in providing operator assisted long distance services to confinement facilities. These services generally involve the provision of coinless telephone service to inmates, usually within the cell in which the inmate is located.² The Company currently

¹ Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (released June 6, 1994) ("Notice").

² AmeriTel's services are typically restricted to outward bound collect calls, with access to other types of calls being blocked. This "collect only" service requires positive acceptance of the call by the called party. This is typically accomplished by the called party using a dial pulse, tone or voice response indicating acceptance of the call and the associated charges. Because of the potential for fraud and abuse, the systems typically deny access to live operators, 911 emergency service, 700, 800 and 900 numbers, directory assistance, credit card calls, third party calls, and other interexchange carriers. Additionally, AmeriTel provides correctional facilities with the capability to place limits on the length of all calls, restrict the time of day when calls

provides such services at over 420 city and county jails located in eight states.³

AmeriTel works hand-in-hand with sheriffs, police and jailers at these locations to provide services which are specially tailored to meet the unique telecommunications needs of such confinement facilities. As explained herein, AmeriTel would simply be unable to provide these critical services under BPP. The enormous investment made to develop these services by ICS Providers like AmeriTel would be worthless. Thus, regardless of what the Commission intends to do with its BPP proposal generally,⁴ it should make clear that the provision of operator services from confinement facilities should be made exempt from the application of any mandatory BPP system.

I. THE CONFINEMENT FACILITIES SUBMARKET DIFFERS SUBSTANTIALLY FROM OTHER PORTIONS OF THE OPERATOR SERVICES MARKET.

The proposition that the situation at confinement facilities differs substantially from the telecommunications market at large is nearly self-evident. Incarcerated individuals are there because they represent a threat to society, and because they have demonstrated a propensity to engage in criminal behavior. Consequently, prisoners have been deprived of many basic freedoms and choices afforded to other citizens, and

can be placed, block access to certain telephone numbers, and receive detailed reports on the calling patterns of individual prisoners.

³ AmeriTel is headquartered in Lees Summit, Missouri and provides service in Missouri, Kansas, Iowa, Nebraska, South Dakota, Arkansas, Oklahoma and Illinois.

⁴ Although its comments are limited to the prison services submarket, AmeriTel wishes to emphasize that it believes that the costs of BPP exceed its benefits in nearly all applications.

jailers are appointed to control the behavior of inmates and make certain choices for them.

Telecommunications rank high among an array of services provided to correctional facilities which must be placed under the auspices and control of jailers and wardens. Without proper controls, prisoners have in the past routinely and seriously abused the availability of such telecommunications services. Examples include:

- The planning or continuation of criminal enterprises and conspiracies from within prison.⁵
- Plotting of escapes from prison.
- Maintaining relationships with former co-conspirators or other criminals in violation of the terms of incarceration.
- Placement of threatening phone calls to witnesses, judges and police.
- Placement of harassing phone calls to victims.
- Extensive use of fraudulent schemes to avoid payment.

These abuses can be prevented only if the jailers or wardens can exert reasonable control over the provision of long distance services to individuals incarcerated at their facilities. ICS Providers such as AmeriTel have developed a package of service enhancements which enable jailers to monitor and control such calling without prohibiting outbound calling by prisoners altogether. For example,

⁵ For example, as recently as July 23, 1994, the Washington Post reported that a notorious drug kingpin was caught attempting to run a drug network by telephone from within a federal penitentiary. See, Attachment A hereto.

AmeriTel enables correctional facilities to limit the length of calls, restrict the time of day when calls can be placed, block access to certain telephone numbers, and receive detailed daily reports on the calling patterns of individual inmates.⁶ By utilizing these AmeriTel service enhancements effectively, jailers can maintain reasonable control within their facilities.

However, each of these services is premised upon one critical fact -- that virtually all outbound calls placed by prisoners are routed to and completed by the ICS Provider which is preselected by the jailer and is working in tandem with the jailer to monitor prison calls. This fundamental precondition would be eliminated by BPP, since prisoners would be free to utilize the services of any of scores of long distance companies without any involvement by the jailer or warden.

The Commission has previously acknowledged that the special fraud concerns relating to inmate telephone traffic warrant special regulatory treatment for inmate calling. For example, in the proceeding to implement the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), the Commission determined that because of the circumstances relating to inmate calling, inmate payphones should be excluded from TOCSIA's unblocking regulations.⁷ The same fraud concerns that caused the Commission to exempt inmate payphones from the

⁶ See Note 2 supra.

⁷ Policies and Rules Concerning Operator Service Providers, 68 RR2d 1584 (1991).

unblocking rules exist in the BPP context. The Commission should follow this precedent and exempt correctional facilities from a mandatory BPP system.

II. BPP CANNOT PROVIDE EFFECTIVE CALL OR FRAUD CONTROL.

A. ICS Providers offer critical call control features.

The special communications needs of correctional facilities currently are being met by premises-based ICS Providers whose primary business is providing this type of call control service to correctional facilities.⁸ To provide this system of comprehensive call control, ICS Providers, such as AmeriTel, employ special premises-based equipment which interacts directly with the inmate and the called party to create the capability to track, audit and control the calling process. As noted above, these premises-based systems can limit the destination numbers which may be dialed by each inmate, block access to specific telephone numbers, limit the length of calls, limit the time of day during which calls may be placed, prevent call forwarding and provide identification to the call recipient that the call is coming from a confinement facility. They also can facilitate critical call detail reporting services on an expedited basis. AmeriTel, for example, provides detailed calling summaries on a weekly basis which allow wardens to ascertain who individual prisoners are calling and how often. In

⁸ It is important to note that BPP would essentially put ICS Providers out of business. ICS Providers like AmeriTel have complied with the FCC's presubscription rules, invested millions of dollars, created new jobs, and developed new technology to meet the needs of correctional facilities. The application of BPP to correctional facilities would render this investment worthless.

special situations, such as escapes, important information can be provided almost immediately.

BPP will strip correctional facilities of the ability to control inmate calls in this highly effective and streamlined manner. ICS Providers currently offer a single source of responsibility that is lost when a patchwork of IXC's and local exchange carriers ("LECs") share responsibility for service. Correctional facilities need a service provider who can offer them all of the critical call control features discussed above. Under BPP, inmates would be free to select long distance carriers that do not have such capabilities. Indeed, under BPP there simply is no incentive for IXC's to provide these special services.

Each correctional facility also has discrete needs and is in the best position to evaluate its inmates and determine what call controls are necessary. Trained law enforcement personnel are in the best position to evaluate the security measures necessary to protect the general population from inmate fraud. Correctional facilities from state to state and county to county each want different and distinct features in their call control and fraud control systems. Under the proposed BPP system, this type of individualized, site-specific call control system will be unattainable.

B. Telephone fraud could dramatically increase under BPP.

The services currently provided by ICS Providers also serve to reduce fraud. Due to the special nature of the submarket which they serve, ICS Providers actively engage in extensive real-time monitoring of prisoner calling to detect and deter

fraudulent calling.⁹ The call control features utilized by ICS Providers are critical to fraud prevention as well. Indeed, fraud control and call control are inextricably intertwined. History has shown that most telecommunications fraud in the prison environment is the result of collusion between the inmate and the called party in an attempt to obtain free calls from the provider of inmate call services. ICS Providers are able to minimize this threat by close tracking of the total interaction between the calling (prisoner) and called (billed) party. BPP would preclude this important fraud prevention activity by enabling the inmate to continuously shift his long distance calling among multiple card issuers.

C. A network-based call control system is inherently flawed.

It has been suggested by advocates of BPP that the call control functions currently provided by premises-based ICS Providers such as AmeriTel could be incorporated into the BPP system itself or the long distance networks of all operator service providers ("OSPs"). However, such a centralized, network-based system is not a feasible solution for either call control or fraud control in the prison submarket.

The basic reason why call control cannot be accommodated in a network-based solution is simple -- effective call control is dependent upon the critical daily interaction between the OSP and the correctional facility. This type of call control system can only be effective if there is a means to ensure daily interaction between every IXC and every correctional institution throughout the nation. This degree of interaction is

⁹ Specific fraud prevention measures cannot appropriately be placed in a public record.

clearly impossible to achieve with a network-based system. Indeed, it is probable that many -- if not most -- of the hundreds of IXC's in the nation have no interest in developing the call control capability needed to make such interaction meaningful for jailers. The use of LEC "ANI 29" signalling does not provide a solution to the inherent problems of a network-based system because OSPs must be able to identify the individual caller, not simply that the call came from a prison.

Indeed, a network-based "solution" would almost surely fail because it would enable prisoners to engage in unbridled "carrier hopping." In order to detect and prevent fraud from prison locations, IXC's must conduct sophisticated call monitoring and screening, much of which is particularly tailored to prison calling. If prisoners are free to route calls to any IXC they wish, they would be able to shop for the IXC's with less sophisticated fraud prevention systems, and then defraud the unsuspecting carrier. If a fraudulent calling scheme is detected by one IXC, the prisoner could simply select another IXC as his service provider and continue his fraudulent scheme. This presents a particularly dire threat to new IXC's, small IXC's and carriers which do not control their own networks (such as switchless resellers). Carriers which are inexperienced in serving this market could be quickly crippled by an avalanche of fraudulent calling placed by unscrupulous prisoners.

It is important to recognize that the feasibility of a network-based solution cannot be measured against the capabilities of large companies such as MCI. Since prisoners would be free to choose any IXC under BPP, the network-based solution

must be assessed by considering the capabilities of the smallest and least sophisticated IXC's.

D. A network-based call control system is unrealistic.

Any type of network-based call control system is plainly unrealistic because every IXC and LEC in the country would be forced to participate. Except for MCI, AmeriTel is aware of no IXC which offers inmate call control systems using a centralized network solution.¹⁰ MCI's proposed solution would require that all call control equipment, all IXC equipment and all LEC switching equipment conform to a standard specification. It is unlikely that this will occur due to the expense involved by all parties. Obviously, very few IXC's possess either the financial or technical resources of MCI.

All LECs would also be required to upgrade their switches to transmit ANI "29" signalling. ANI "29" is not universally available at present and it is unlikely to be available in the near future. Many LECs, particularly those in the rural areas where prisons are frequently located, do not offer or do not have the capability to carry that ANI code. The provision of the ANI "29" is a fundamental component of a network-based call control system. Thus, the Commission would be forced to mandate that every LEC upgrade their facilities to provide ANI "29." It is unreasonable to impose this requirement on all LECs when companies such as AmeriTel already provide services which solve the problem addressed by ANI "29."

¹⁰ It is worth noting that many jailers and wardens have rejected use of MCI's system as insufficient to meet their special needs.

III. BPP WOULD CAUSE CORRECTIONAL FACILITIES TO LOSE REVENUE REQUIRED TO FUND PRISON TELECOMMUNICATIONS SERVICES AND TRAINING PROGRAMS.

If BPP is made applicable to correctional facilities, their current premises-based ICS Providers are likely to remove their prison call control systems and stop providing the critical reporting services upon which jailers have come to rely. Without the promise of the revenue stream to be derived from presubscribed traffic, IXC's will have no incentive to provide these expensive service enhancements. Under BPP, the operator services revenue stream which had paid for these services will be gone, as inevitably will be the important call control and fraud prevention services themselves.

Under BPP, correctional facilities will also be stung by the loss of the commission revenue stream that currently funds important inmate programs. ICS Providers normally pay commissions to jailers in return for the privilege of serving their facilities. Many states require that the commission revenue generated through inmate calling be used by correctional facilities solely to benefit inmates. The types of programs funded by this source of revenue include drug rehabilitation, inmate education programs, law libraries, physical education and family visitation programs. Revenue-sharing arrangements with ICS Providers have been an innovative and effective means of financing these important inmate programs. Under BPP, such commission programs will be eliminated; and the services they funded will either be lost or have to be paid for by taxpayers.

Moreover, the telecommunications services provided to inmates and their families would actually be degraded by BPP. Because call control would be

dramatically reduced, jailers would be forced to place new, stringent restrictions on inmates' use of telephones. Many facilities may be forced to drastically reduce the number of telephones available or limit the hours available for inmate calling.

Additionally, the telephone equipment at correctional facilities is likely to deteriorate as a result of BPP. ICS Providers currently have an economic incentive to repair their phones and keep them in service. Since they will no longer have an economic interest in the equipment under BPP, repairs may be seriously delayed. Thus, although BPP would enable inmates to choose a preferred OSP, the overall quality of the telecommunications services would suffer under BPP.

IV. THE RATES CHARGED BY ICS PROVIDERS DO NOT JUSTIFY ADOPTION OF BPP.

One of the Commission's primary reasons for proposing BPP is to prevent ICS Providers from charging unreasonably high rates. In the past, some ICS Providers may have charged unreasonably high rates for inmates' collect calls. However, most of those problems have been eradicated through increased awareness of the situation by jailers and competition in the inmate telephone market. It is important to note that many states already have mandated rate ceilings for ICS Providers. Moreover, many correctional facility administrators are sensitive to the overcharging issue and contractually require that ICS Providers not charge in excess of dominant carrier rates

for collect calls originating from their facilities. For these reasons, a majority of AmeriTel's traffic today is priced at or below dominant carrier rates.¹¹

Any limited overcharging which may still be occurring is minor and cannot reasonably be used to justify replacing the current system with BPP. As described above, BPP would be devastating for both ICS Providers and the correctional facilities which they serve. If BPP is implemented at confinement facilities, inmate families will still pay the same rates for the specialized inmate phone equipment required through call surcharges or other forms of payment, yet correctional facilities will lose critical services. Thus, BPP is not the solution to the problem of excessive rates and ultimately will cause more harm than good. The Commission should address the problem of excessive rates directly rather than through this indirect and overly intrusive proposal. Although AmeriTel believes that setting arbitrary limits on OSP rates in confinement facilities is unnecessary, such a solution is preferable to adopting a BPP system which would eliminate presubscription from confinement facilities entirely.

V. CONCLUSION

AmeriTel believes that application of a BPP system in the correctional facilities submarket clearly is not in the public interest. Correctional facilities would lose critical call control services, inmate fraud would dramatically increase and ICS

¹¹ AmeriTel provides the called party with a detailed bill that contains sufficient information so that the party responsible for paying the bill is fully informed of the nature of the call and the charges incurred. AmeriTel also includes a toll free number with its bill for customer questions about telephone charges.

Providers would essentially be put out of business. This result is not reasonable or desirable. If the Commission determines that BPP should be implemented, it should provide an express exemption for service to correctional facilities.

Respectfully submitted,

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HEADLINE: Convicted Cocaine Dealer Investigated in U.S. Prison;
Rayful Edmond Suspected of Trafficking

SERIES: Occasional

BYLINE: Paul Duggan, Washington Post Staff Writer

BODY:

Rayful Edmond III, convicted of leading Washington's biggest and most violent cocaine ring in the late 1980s, is the focus of a new drug investigation involving his activities in federal prison, a law enforcement source said yesterday.

Federal authorities declined to discuss the investigation yesterday, other than to say that no criminal charges had been filed against Edmond.

WUSA-TV (Channel 9), which reported on the investigation Thursday, said Edmond, 29, is suspected of running a lucrative drug network by telephone from the federal penitentiary in Lewisburg, Pa. He is serving a life sentence without possibility of parole.

A law enforcement source confirmed yesterday that Edmond, as well as suspects outside of prison, are the focus of a drug-trafficking probe by the FBI and D.C. police. The source would not elaborate.

Edmond, whose flashy lifestyle made him famous on District streets, was convicted in 1989 of heading a drug operation that authorities said generated sales of as much as \$ 2 million a week.

Federal investigators at the time said they believed the ring was linked to as many as 30 drug-related slayings.

Gregory L. Bogdan, a spokesman for the U.S. Bureau of Prisons, said Edmond was transferred Wednesday or Thursday from the Lewisburg penitentiary to another high-security federal prison, in Allenwood, Pa. Bogdan said he was not allowed to discuss the reason for the transfer.

In February 1990, Edmond began serving his sentence at the federal government's most secure prison, in Marion, Ill., where inmates are allowed out of their cells for only a brief period each day. In September 1990, Edmond was transferred to the less restrictive Lewisburg prison.

The Lewisburg penitentiary and the Allenwood facility where Edmond is now a

The Washington Post, July 23, 1994

prisoner are among eight federal prisons classified as "high-security," a step below the maximum-security Marion penitentiary, Bogdan said.

In the 1980s, according to authorities, Edmond supervised a wholesale and retail drug-trafficking operation that employed more than 150 people and at its peak brought 1,700 pounds of cocaine a month into Washington.

Officials said Edmond maintained his dominance of the cocaine market in Washington largely because of associates in Los Angeles who secured Colombian cocaine for him.

The operation afforded Edmond and his local associates a lavish lifestyle that included frequent travel, flashy cars, gold jewelry and a seemingly endless supply of expensive clothing.

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